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ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

October 20, 2011

The Honorable Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Chu:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is examining the Department of Energy (DOE) Loan Guarantee Program. We are writing today regarding our request to have certain DOE employees appear for transcribed interviews relating to the review of the Solyndra loan application and its restructuring.

In particular, we have requested that Susan Richardson, Chief Counsel of the DOE Loan Programs Office, and potentially others appear for a transcribed interview, under oath. On Tuesday, October 18, 2011, the DOE Deputy General Counsel for Litigation and Enforcement informed Committee staff that DOE was refusing to make them available for a transcribed interview.

This Committee has conducted transcribed interviews in the past. For instance, in the 111th Congress, Committee staff conducted transcribed interviews of witnesses in its investigations related to unintended acceleration events in Toyota vehicles, the Deepwater Horizon oil spill, and an explosion at a Bayer CropScience plant.

DOE's insistence that Ms. Richardson instead appear for a discussion¹, without a transcript or under oath, is insufficient. As an initial matter, it is unclear to us why DOE is

¹Together with other employees of the DOE Loan Programs Office, Ms. Richardson has participated in briefings involving certain DOE Office of Inspector General and Government Accountability Office reports on the Loan Guarantee Program, briefings on the Solyndra restructuring generally, and on the Section 1705 loan guarantee portfolio.

concerned about having an official record of the interview or ensuring that Ms. Richardson answer questions under oath. The circumstances surrounding her legal memorandum supporting DOE's decision to subordinate its interest in the Solyndra loan guarantee are a matter of particular concern to the Committee. The Committee only became aware of this memorandum after it was produced by the Office of Management and Budget (OMB) pursuant to the Committee's subpoena to OMB for documents relating to the Solyndra loan guarantee. After the OMB produced what appears to be a draft version of this document to the Committee in August, the Committee asked the DOE for the final version of the memorandum. Only then was that version produced to the Committee in September, a full seven months after the Committee's first request for documents.

At a hearing before the Subcommittee on Oversight and Investigations on October 14, 2011, the Democrat Members of the Committee sought unanimous consent to enter into the hearing record the two different versions of Ms. Richardson's legal memorandum on subordination. During that hearing, the Members discussed a number of questions they had about the reasons why the memorandum was drafted and how it was reviewed. For instance, the Committee Members want to know how many drafts of this memorandum exist; when the DOE began drafting the memorandum; who asked for the memorandum to be drafted; who reviewed it and signed off on the legal analysis; and why the version produced by the OMB was addressed to Secretary Chu, while the final version produced by the DOE was addressed to the DOE General Counsel. These are critical issues to the Committee's investigation.

For the purpose of establishing a record to assist in our investigation of these very issues, we had hoped the DOE would allow Ms. Richardson to appear voluntarily and answer the Committee's questions during an in-depth, transcribed interview. While the documents provide some information about the DOE's decision on subordination, the Committee has many unanswered questions concerning its creation. Mr. Lynch has indicated that the DOE is willing to make Ms. Richardson available to testify under oath at a hearing about the restructuring and subordination. We are therefore puzzled as to why DOE refuses to make her available for a transcribed interview on the same matters, and ask you to reconsider your position. It is time for all the facts to come out about the Solyndra loan guarantee, and we hope for the DOE's continued cooperation in providing the Committee with the information it needs to conduct its investigation. Please contact Committee staff no later than Friday, October 21, 2011, with your response.

If you have any questions about this letter, please contact Karen Christian or Todd Harrison with the Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Letter to the Honorable Steven Chu

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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations